

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 20, 2020

Ms. Karen S. Mitchell
Northern District of Texas, Dallas
United States District Court
1100 Commerce Street
Earle Cabell Federal Building
Room 1452
Dallas, TX 75242

No. 19-10313 USA v. Derek Hutter
USDC No. 3:17-CV-3146

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc w/encl:

Mr. George Edward Ashford III
Ms. Leigha Amy Simonton
Mr. Michael Ufferman

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-10313

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

DEREK HUTTER,

Defendant–Appellant.

Appeal from the United States District Court
for the Northern District of Texas

O R D E R:

Derek Hutter, federal prisoner #48987-177, seeks a certificate of appealability (COA) to appeal the denial of his 28 U.S.C. § 2255 motion challenging his conviction and sentence for enticement of a minor. He contends that his guilty plea was involuntary because his trial counsel did not tell him about the viability of possible defenses. Hutter further argues that his trial counsel was ineffective for not offering mitigating evidence at sentencing and not objecting to the district court’s consideration of an improper sentencing factor.

A COA may issue if a movant makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). If the district court denied relief on the merits, a movant must establish that jurists of reason could debate the district court’s resolution

of his constitutional claims or that the issues raised were adequate to deserve encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

Hutter has not made the required showing. Thus, his motion for a COA is DENIED.



A True Copy
Certified order issued Mar 20, 2020

Styl W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Don R. Willett

DON R. WILLETT
UNITED STATES CIRCUIT JUDGE